IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.672 OF 1995
IN
NOTICE OF MOTION NO.925 OF 1989
IN
SHORT CAUSE SUIT NO.1055 OF 1989

1. Anita Sohanlal Ghai

2. Meena Sohanlal Ghai

3. Sheela, wife of Late Sohanlal
Bansiram Ghai, .. Appellants/
(Orig.Defts.1,2 & 5)

All residing at 7, Asha Colony,
Juhu Tara Road, Bombay-49.Appellant

v/s.

1. Snehalata wd/o Sohanlal Ghai
alias Sohanlal Bansiram Kanwar,
residing at 601, 6th floor,
Casa Maria, D'Monte Part Road,
Bandra (West), Bombay-400 050.

2. Indira Sohanlal Ghai, (then minor
now major)

3. Lekhraj Sohanlal Ghai, a minor
age about 13 years by his next
friend, mother & natural guardian
Smt.Snehlata sohanlal Ghai, the
respondent No.1 abovenamed, all
residing at 601, 6th floor, Casa
Maria, D'Monte Park Road,
Bandra (W), Bombay-400 050.

4. Vijayalaxmi,
presently residing at Flat No.5,
Sea Bird, Byramjee Jijibhoy Road,
Bandra (West), Bombay-400 050.

5. Film Centre,
a Laboratory, having its office
at 68. Tardeo, Bombay-400 034. .. Respondents
(Nos.1 to 3 orig.
Plffs. Nos.4 and 5
orig.defts.Nos.3
and 4.)

Mr.Rajiv Narula i/by M/s.Jhangiani Narula & Associates for appellants.

Mr.M.P.S.Rao with Mr.Arvind Rathod and Ms.Kadam for respondent Nos.1 to 3.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 22nd December, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

The original defendant Nos.1,2 and 5 are in appeal against the order dated 25.4.1995 to the extent the learned motion Judge ordered that the defendant Nos.1 and 2 will stay in the premises viz. Bungalow No.7, Asha Colony, situate at Juhu, Mumbai subject to such terms and conditions that may be fixed by the Court Receiver with regard to the payment of compensation and also upon their executing the necessary agency agreement.

2. The only grievance raised by the learned counsel for the appellants (defendant Nos.1,2 and 5) is that the learned motion Judge ought not to have directed payment of compensation and royalty for the use and occupation of the said premises as defendant Nos.1 and 2 have right in the estate of the deceased Sohanlal Ghai.

3. Before we deal with the aspect further we may notice here that the plaintiff no.2 (respondent No.2 herein) filed an affidavit on 27th October, 2004 in the appeal praying therein that she may be

permitted to use and occupy the premises being Flat No.6, Sea Bird, Bandra (West) as an agent of the Court Receiver without security and royalty for the reasons stated therein.

4. The respondent Nos.1,2 and 3 (original plaintiffs) have filed the suit seeking declaration that the plaintiffs and the defendant Nos.1 and 2 are the only heirs and legal representatives of the deceased sohanlal Ghai and are entitled to the estate, properties, assets etc. of the deceased including those set out in Exhibit "D" annexed to the plaint. The plaintiffs also sought declaration that defendant No.3 has no right, title or interest in the estate of the deceased.

5. Sohanlal Ghai (since deceased) was film producer. He is seemed to have acquired substantial wealth including immovable properties and assets during his lifetime. The original defendant No.5 married Sohanlal Ghai and out of that wedlock, two daughters-defendant Nos.1 and 2 were born. According to the plaintiffs, the marriage between defendant No.5 and Sohanlal Ghai stood dissolved in pursuance of the decree of divorce passed in the matrimonial proceedings while as per the case set up by the defendant No.5, her marriage with Sohanlal Ghai continued and in the

matrimonial proceedings only decree for judicial separation came to be passed. The plaintiff No.1 set up the case in the plaint that she is the legally wedded wife of said Sohanlal Ghai as the marriage between Sohanlal Ghai and defendant No.5 was dissolved. The plaintiff No.1 claims to have married Sohanlal Ghai on 15.8.1974 according to the Hindu Vedic Rites and the said marriage was also registered under the Special Marriage Act. It is the plaintiffs' case that out of the said wedlock, the daughter and the son (plaintiff Nos.2 and 3) were born. The plaintiffs averred that though defendant No.3-Vijayalaxmi claims to have married Sohanlal Ghai but there was no valid marriage subsisting between then and plaintiff No.1 is the only legally wedded wife of the deceased Sohanlal Ghai. The defendant No.3 is already dead. The dispute, in fact, is now between the plaintiffs and the defendant Nos.1,2 and 5. Interalia, the immovable properties and the estate are set out in Exhibit "D" annexed to the plaint and that read thus-

"1.	Two Flats one bearing No.5 and another bearing No.6 in Sea Bird Building situate at Byramji Jeejeebhoy Road, Bandra (West), Bombay - 400 050. Purchased on 15.10.1971.
2.	Premises being Bungalow No.7 Asha Colony, situate at Juhu, Bombay 54, Purchased on 14.7.72.

3.	Premises being office premises No.301, admeasuring 992 square feet on 3rd floor in Neelam Building, situate at Worli Sea Face Road, Bombay-400018. Purchased on 23.12.1972.
4.	Plot of land with structure bearing Survey No.20, Hissa No.43, admeasuring 1963 square yards or thereabouts situate at Madh Island Yarangal, Taluka Borivli, within the Registration District and Sub-District of Bombay City and Bombay Suburban. Purchased on 4.12.1982.
5.	Flat used as Godown at Gautam Apartment situate at Pali Hill, Bandra (West), Bombay -50.
6.	A flat consisting of Hall, two bed rooms with attached baths, Kitchen bearing No.320-C in Diwan Mansion, Navghar, Vasai Road, at Vasai, Dist. Thane.
7.	Shop situated on ground floor at Shastri Nagar, Versova, Andheri (West), Bombay.
8.	Residential Plot admeasuring 208.33 square yards or thereabouts situate at 162, Rashtriya Co-operative Housing Society, New Delhi. Purchased on 26.12.1978 by perpetual sub-Lease from D.D.A. (i.e. Delhi Development Authority).
9.	Residential House being Flat No.43-B, in Udhan Singh Nagar at Ludhiana (State of Punjab) purchased on 26.7.1975.
10.	Premises being Flat admeasuring 708 square feet on 3rd floor in Akash Deep Building, situate at Plot No.26, Bara Khamba Road, New Delhi, Purchased on 16.4.1973.
11.	Premises being Flat No.1 admeasuring 840 square feet, on 4th floor, in Rohit House situate at 3, Tolstory Marg, New Delhi. Purchased on 16.9.1974.

12. Farm admeasuring 14 Acres bearing Survey No. situate Faridabad, Delhi (State of Harayana). Purchased on 16.6.1971.

13. Plot of land at Janagadh (State of Gujarat). Purchased on 19.7.1983."

6. As already noticed above, the principal issue involved in the appeal is with regard to the immovable property being Bungalow No.7, Asha Colony, situate at Juhu, Mumbai in respect of which the learned motion Judge has while appointing the Receiver directed the defendant Nos.1 and 2 to pay compensation (royalty) for the use and occupation of the said bungalow as an agent of the Court Receiver. The incidental question that is to be considered by us is with regard to the prayer made by plaintiff No.2 for permitting her to use and occupy Flat No.6, Sea Bird, Bandra (West) as an agent of the Court Receiver without royalty and security for the reasons set out therein.

7. It is true that there is serious dispute between the parties viz. the plaintiffs on the one hand and the defendant Nos.1,2 and 5 on the other about the status of first plaintiff and the defendant No.5 as legally wedded wife of the deceased Sohanlal Ghai. The learned motion Judge rightly observed that this is a question which would require evidence to be examined at the time of trial of the suit. The fact that the defendant

Nos.1 and 2 are the legal heirs having right in the estate, immovable properties and assets of the deceased Sohanlal Ghai is not in question. As a matter of fact, the plaintiffs themselves have prayed in the suit that it be declared that the plaintiffs and defendant Nos.1 and 2 are the legal heirs of the deceased Sohanlal Ghai. The learned motion Judge found that the defendant Nos.1 and 2 with defendant No.5 came into possession of Asha Colony Bungalow No.7 after the ad-interim order came to be passed on 7.4.1989. This finding was founded on the Court Receiver's report that Asha Colony Bungalow No.7 was not used as residential premises by the defendant Nos.1,2 and 5 before the ad-interim order came to be passed. The learned motion Judge may not be fully justified in holding so because we find that in the order dated 7.4.1989 (ad-interim order) itself the claim of defendant Nos.1 and 2 is noticed that Asha Colony Bungalow No.7 is residential premises. In view of the fact that the defendant Nos.1 and 2 are admittedly the legal heirs of the deceased Sohanlal Ghai and Asha Colony Bungalow No.7 is in their possession, we are of the view that it may not be justified to direct the defendant Nos.1 and 2 to pay compensation (royalty) for the use and occupation of Asha Colony Bungalow No.7. The Receiver has already been appointed over the entire estate, properties and

assets of the deceased Sohanlal Ghai. This aspect is not under challenge before us. We are, therefore, of the view that defendant Nos.1 and 2 who are admittedly the legal heirs of deceased Sohanlal Ghai ought to have been permitted to use and occupy Asha Colony Bungalow No.7 without security and royalty and to that extent, the impugned order needs to be modified.

8. Now we take up the affidavit of plaintiff No.2 (respondent No.2) dated 27.10.2004 wherein she has prayed that she be permitted to use and occupy flat No.6, Sea Bird, Bandra (West). It is not in dispute that the said flat is part of the estate of the deceased Sohanlal Ghai. It is also not in dispute that the Court Receiver has been appointed with regard to the said flat and the said flat is locked and not in use. The plaintiff No.2 in her affidavit has set up that she is daughter of the first plaintiff and deceased Sohanlal Ghai. She had completed S.S.C., H.S.C., M.B.B.S. and Diploma in Preventive Health. She is presently prosecuting Master Course in Preventive Health (MPH). The said course is of three year duration. One year is already over. According to her, presently she alongwith her mother (plaintiff No.1) and brother (plaintiff No.3) is residing in two room flat (800 sq.ft.). Her brother is studying in second year

engineering (Chemical Engineering) and for prosecuting her studies of MPH, she is required to attend hospitals and patients at odd hours and therefore, she requires an independent residence. That may also save her brother from disturbance since he is also prosecuting the professional course in engineering. She has, therefore, prayed that she be permitted to use and occupy flat No.6, Sea Bird, Bandra (West). The prayer made by plaintiff No.2 is seriously opposed by defendant Nos.1,2 and 5. The said defendants are disputing that she is daughter of Sohanlal Ghai. According to said defendants, she is daughter of one Venkatesh Banawale. It is also stated that the first plaintiff owns and possesses three flats being Flat No.601, situated at Casa Maria, D'Monte Park Road, Bandra (West), Mumbai, Flat No.12, situated at Dakshina Park, JVPD Scheme, Juhu, Mumbai and Flat situated on 2nd floor, Ashutosh Building, Ambedkar Road, Khar (West), Mumbai. According to the defendant Nos.1,2 and 5 (appellants herein), the present application by plaintiff No.2 is made with malafide intention and by suppressing the material documents.

9. We reflected over the matter. We have no hesitation in observing that there should not be any impediment in granting the prayer of plaintiff

No.2 to use and occupy flat No.6, Sea Bird, Bandra (West), Mumbai until she completes MPH course. We are pained to observe that to this very reasonable prayer, attitude of defendant Nos.1,2 and 5 has not been reasonable. We say so because the aspects whether the first plaintiff or defendant No.5 is the legally wedded wife of deceased Sohanlal Ghai or whether the plaintiff No.2 is the daughter of deceased Sohanlal Ghai, shall finally be decided during the trial after the parties had led their evidence but at this stage, taking overall facts and circumstances of the case into consideration, it cannot be concluded that the plaintiff no.2 has no interest in the estate of the deceased. As regards the contention of the defendant Nos.1, 2 and 5 that plaintiffs are in occupation of three flats being Flat No.601, situated at Casa Maria, D'Monte Park Road, Bandra (West), Mumbai, Flat No.12, situated at Dakshina Park, JVPD Scheme, Juhu, Mumbai and Flat situated 2nd floor, Ashutosh Building, Ambedkar Road, Khar (West), Mumbai, suffice to say that no material worth the name could be shown by the learned counsel for the defendants 1, 2 and 5 that the said flats are part of the estate of the deceased. Flat No.601, situated at Casa Maria, D'Monte Park Road, Bandra (West), Mumbai is of course in possession of the plaintiffs of which reference has already been made

by plaintiff No.2 in her affidavit. The other two flats of which reference has been made in the affidavit of defendant No.5, nothing could be shown that the said flats were in possession of the plaintiffs. In our considered opinion, interest of justice shall be subserved if the second plaintiff is permitted to use and occupy flat No.6, Sea Bird, Bandra (West), Mumbai as an agent of the Court Receiver without security and royalty until completion of Master course in Preventive Health. This course will not adversely affect the rights of the defendant nos. 1, 2 and 5.

10. We, accordingly, dispose of the appeal by the following order:-

i) The appellant Nos.1 and 2 (defendant Nos.1 and 2) shall remain in possession of Asha Colony Bungalow NO.7 as an agent of the Court Receiver without royalty and security. To that extent only the impugned order is modified.

ii) The respondent no.2 (plaintiff No.2) is permitted to use and occupy Flat No.6, Sea Bird, Bandra (West), Mumbai as an agent of the

Court Receiver without royalty and security for the period until she completes her course in Master in Preventive Health (MPH). The plaintiff no.2 will hand over the possession of the said flat to the Court Receiver as soon as her MPH course is complete.

No costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)